IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1060 of 2001

with

SPECIAL CIVIL APPLICATION No 1515 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TRUMAC ENGINEERING CO LTD

Versus

KATHIRIYA MAGAN BHANABHAI

Appearance:

1. Special Civil Application No. 1060 of 2001
   MR RD RAVAL for Petitioner No. 1
   NOTICE SERVED for Respondent No. 1-2,6,9-12
   NOTICE UNSERVED for Respondent No. 3-5,7
   ***** for Respondent No. 8
   GOVERNMENT PLEADER for Respondent No. 13
2. Special Civil Application No. 1515 of 2001
   MRS PC FERNANDEZ for Petitioner No. 1
   RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 17/03/2004

ORAL JUDGEMENT

Since in both these matters, common question is involved and there is challenge to the common order, they are being considered together.

2. Special C.A.No.1060/01 is preferred by the principal employer challenging the order of reference made by the Asst.Labour Commissioner for reinstatement of the concerned workman.

3. Special C.A.No.1515/01 is preferred by the contractor challenging the very decision of the Asst.Labour Commissioner for making reference to the labour court for adjudication on the aspect of reinstatement.

4. Heard Mr.R.D.Raval for the petitioner of Spl.C.A.No.1060/01, the principal employer and Ms.Fernandez for the contractor who has preferred the Spl.C.A.No.1515/01.

5. Mr.Raval for the principal employer contended interalia that the workmen concerned were the employees of the contractor and he submitted that as such since the contract came to an end the contractor has transferred the workmen to a different place and such action is treated as termination and the reference is made. Mr.Raval submitted that as such there is no dispute exists between the workmen and the contractor or in any case with the principal employer and therefore power under section 10 of I.D.Act could not have been exercised for demanding reference. Mr.Raval also submitted that during the conciliation proceedings before the officer the contractor had declared that workmen are transferred and the concerned workmen have shown unwillingness to join duty at the transferred place and therefore Mr.Raval submitted that it can not be said to be a dispute which can be referred to the forum for adjudication. Therefore, he submitted that the order passed by the labour court deserves to be quashed.

6. Ms.Fernandez appearing for the contractor in Spl.C.A.No.1515/01 has, in substance, adopted the submissions made by Mr.Raval so far as the challenge to the order passed by the Asst.Labour Commissioner for

making reference is concerned. However, she additionally submitted that the termination is not there at all and it is on account of expiry of contract the workmen concerned were transferred to different place and therefore it has been submitted that when the workmen are not willing to join duty at transferred place it can not be said that there is termination and/or there is any dispute between the concerned workmen and the contractor and therefore she also submitted that the order passed by the Asst.Labour Commissioner for making reference deserves to be quashed.

7. The Ld.counsel appearing for both sides have also contended that inspite of notice issued by this court workmen have chosen not to appear and the same shows that the concerned workmen have no desire to join duty at transferred place and therefore also the order passed by the authority for making reference deserves to be interfered and quashed.

8. Having considered the above and if the record is examined it appears that the dispute is raised by the concerned workmen complaining that on 3.8.2000 their services are terminated by oral order and such complaint or the statement are produced in both the petitions. If the terms and conditions of contract are examined the contract was in force upto 8.10.00. Therefore, on the date when the alleged termination is made, the contract was in force and the ground as to transfer or socalled termination on account of expiry of contract will have to be examined by the court which is referred the dispute for adjudication. So far as the ground of socalled transfer is concerned at least on 3.8.00 since the contract was in operation even as per record submitted by the petitioner it will have to be examined as to whether such ground is genuine or not.

9. It appears that before the Asst.Labour Commissioner the workmen complained for termination on 3.8.00 whereas the case of the contractor as well as the principal employer is that it is not termination but it is transfer. Therefore, it can not be said that no dispute exists between the workmen concerned and their employer. When the authority has found that the settlement is not possible and the dispute exists and when the authority in exercise of its powers has taken decision to refer the dispute for adjudication it can not be said that there is inherent lack of jurisdiction on the part of the authority nor can it be said that the decision for making reference is on the face of it arbitrary. I find that the detailed examination of the

ground of termination or otherwise including its legality and validity is not required at this stage since the said aspect is yet to be adjudicated upon by the court and the concerned court will have to independently examine the matter on the basis of material which may be adduced before it during the course of adjudication and after appreciation in accordance with law.

10. In view of the above I find that there is no merit in both the petitions and hence both the petitions are dismissed. Rule in Spl.C.A.No.1515/01 is discharged. Notice in Spl.C.A.No.1060/01 is discharged. Ad interim relief is vacated. In the facts and circumstances of the case there shall be no order as to costs.

17.3.04 (JAYANT PATEL,J)